



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2021

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.470 of 2011

M/s.Manapparai Maris Spinners Mill Employees' Union,
Registration No.1288/TRI,
Represented by its General Secretary,
A.Balasubramani,
Having its Registered Office at
North Edayapatti,
Puthanatham Post,
Manapparai Taluk,
Tiruchirappalli District - 621 310.

... Appellant/Appellant/Defendant

Vs.

M/s.Maris Spinners Limited,
Unite II, Represented by its General Manager,
Having its Mill Premises at
Kulithalai Road,
Sevalur Village,
Manapparai Taluk,
Tiruchirappalli District.

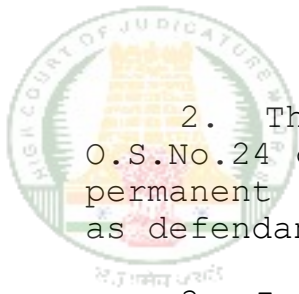
... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 26.08.2010 passed in A.S.No.85 of 2010 on the file of the Principal District Court, Tiruchirappalli, confirming the judgment and decree, dated 30.06.2009 passed in O.S.No.24 of 2005 on the file of the II Additional Subordinate Court, Tiruchirappalli.

For Appellant	: Mr.M.Subash Babu
For Respondent	: Mr.M.Ajmal Khan
	Senior Counsel
	for Mr.G.Mohankumar

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.24 of 2005 by the II Additional Subordinate Court, Tiruchirappalli and in A.S.No.85 of 2010 by the Principal District Court, Tiruchirappalli, are being challenged in the present Second Appeal.



2. The respondent / plaintiff has instituted a suit in O.S.No.24 of 2005, on the file of the trial Court for the relief of permanent injunction, wherein, the present appellant has been shown as defendant.

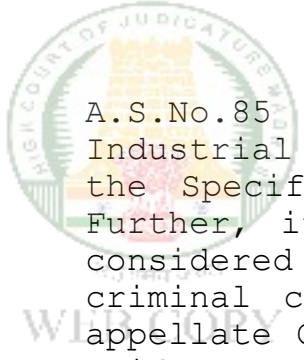
3. In the plaint, it is averred that the plaintiff is the Management of Manapparai Maris Spinners Limited, Manapparai and on 16.11.2004, there was a dispute between one of the employee by name Velusamy and the Supervisor in respect of allocating overtime duty to a co-employee by name Ayyakannu, due to which, disciplinary action was initiated and the erring employees were placed under suspension and the employees of the plaintiff formed a trade union and registered the same in November, 2004 and indulged in strike, agitation and dharna and they have also restrained the local employees from attending the duty. Hence, the plaintiff filed a suit for permanent injunction restraining the defendant and its men from indulging in agitation activities within a radius of 300 meters from the plaintiff Mill premises.

4. In the written statement filed on the side of the defendant, it is averred that the Management has treated the employees as cattles and bonded labourers and even the women employees were not treated humanly and the plaintiff has placed the Vice-President of the union M.Velusamy, who has given voice in support of the employees, under suspension. The defendant agreed to the advices of the Conciliation Officer, but the Management has refused to change its stand. The defendant's Union never committed any unlawful act and the union is voicing its grievances only in a legal and peaceful manner, after intimating to the appropriate authorities, but the plaintiff has refused permission even to hoist the union flag infront of the Mill. The suit claim was barred by Industrial Disputes Act and Trade Unions Act and the civil Court has no jurisdiction to entertain the suit.

5. Before the trial Court, on the side of the plaintiff, one Sekar was examined as P.W.1 and Exs.A1 to A20 were marked. On the side of the defendant, D.W.1 to D.W.3 were examined and Exs.B.1 to B.13 were marked.

6. On the basis of the rival pleadings on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit in favour of the respondent / plaintiff by granting a decree of permanent injunction in favour of the plaintiff Management by injuncting the defendant-trade union from holding any violent activities during Agitation and Dharna and had directed the workmen to raise slogan and objections beyond 300 meters away from the factory premises.

7. Aggrieved by the Judgment and decree passed by the trial Court, the defendant as appellant, had filed an Appeal Suit in



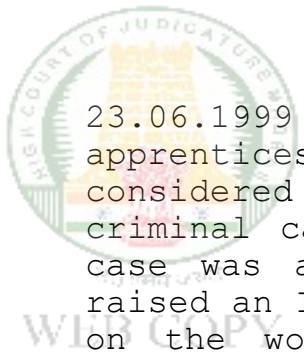
A.S.No.85 of 2010 stating that the suit claim is barred by Industrial Disputes Act and Trade Union Act and by the provisions of the Specific Relief Act and the civil Court lacks jurisdiction. Further, it is stated that the subsequent events also have to be considered and the members of the defendant were acquitted in the criminal case foisted at the behest of the plaintiff. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court. The first Appellate Court allowed the additional documents filed on the side of the appellant/defendant, which were marked as Ex.B.14 and Ex.B.15.

8. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present second appeal has been preferred at the instance of the defendant as appellant.

9. Heard the learned counsel for the appellant and the learned counsel for the respondent and also perused the records carefully.

10. The learned counsel appearing for the appellant / defendant would submit that no proper issues were framed for consideration and there is absence of any jurisdiction to conduct an enquiry on the locality of strike which resulted in miscarriage of justice and the civil Court has got no jurisdiction which claim was also not pressed by the learned counsel for the appellant. Further, the prayer is barred under the provisions of the Specific Relief Act and the erroneous finding of the suit is to be set aside stating that there is no cause of action arises for granting any such relief, when the Management has failed to prove by let in any evidence on the baseless and malicious averments in the suit. He further submitted that the first Appellate Court has not considered the documentary and oral evidences of the Trade Union and has simply brush aside the same, which is erroneous. The evidence of the Inspector of Police, Manapparai Police Station, who was examined as D.W.3 and the general diary marked as Ex.B.14 which was marked at the instance of the appellant, has a vital role on the subject matter and the same has not at all been referred by the Courts below. Further, no reasons have been stated while confirming the judgment and decree of the trial Court by the first Appellate Court.

11. Further, the subsequent events had made the suit as infructuous and the same has to be dismissed and the permanent injunction granted has resulted in totally taking away the democratic rights enshrined in the Constitution of India, by which, the Trade Unions are protected, wherein, they were allowed to demonstrate peacefully by holding Dharna. The Courts below have not considered the fact that there is a nomenclature maintained during the pendency of the suit which would show that they are not in the habit of violating the Labour Laws and the respondent/plaintiff had entered into a five year wage settlement, dated



23.06.1999 with the handpicked apprentices, as it is binding all the apprentices has to be considered and this point need not be considered which is not the subject matter of the issue on hand. The criminal case have been let out by no evidence to prove that the case was also not considered by the Courts below. The defendant raised an Industrial Dispute demanding wage revision and improvement on the working conditions before the Assistant Commissioner of Labour (Conciliation), Tiruchirappalli, wherein, conciliation proceedings were initiated and inspite of the same, the Management has not accepted the claim made by the defendant-Trade Union, the Government has declined to refer the Industrial Dispute to the Labour Court on various technical grounds in G.D(D).No.472, dated 12.08.2009. He further submitted that there was no action taken against them by the Government and the Management had influence and protected their democratic rights and prayed for allowing the Second Appeal.

12. The learned counsel appearing for the appellant relied on the following judgments:-

- (i) **The Central Bank of India Vs. central Bank Officers Association (Gujarat)** reported in **1997 (0) LIC 3421**.
- (ii) **The Management Vs. The President Officer, Labour Court, Vellore and another** reported in **CDJ 2005 MHC 1747**.

13. The learned counsel appearing for the respondent / plaintiff would submit that both the Courts below have rightly decreed the suit and prayed for dismissal of the Second Appeal.

14. The learned counsel appearing for the respondent relied on the following Judgments:-

- (i) In **Railway Board, New Delhi and another Vs. Niranjan Singh** reported in **AIR 1969 SC 966 (Volume 56 C 178)**, the Hon'ble Supreme Court opined thus:-

"13. It is true that the freedoms guaranteed under our Constitution are very valuable freedoms and this Court would resist abridging the ambit of those freedoms except to the extent permitted by the Constitution. The fact that the citizens of this country have freedom of speech, freedom to assemble peaceably and freedom to form associations or unions does not mean that they can exercise those freedoms in whatever place they please. The exercise of those freedoms will come to an end as soon as the right of someone else to hold his property intervenes. Such a limitation is inherent in the exercise of those rights. The validity of that limitation is not to be judged by the tests prescribed by Sub-Articles (2) and (3) of Article 19. In other words the contents of



the freedoms guaranteed under Clauses (a), (b) and (c), the only freedoms with which we are concerned in this appeal, do not include the right to exercise them in the properties in his contentions then a citizen of this Country in the exercise of his right under Clauses (d) and (e) of Article 19(1) could move about freely in a public office or even reside there unless there exists some law imposing reasonable restrictions on the exercise of those rights."

(ii) **The Enfield India Limited rep. by its Executive Director** reported in **1994 (2) LW 476**.

(iii) **The Food Corporation of India and others Vs. Food Corporation of India and others** reported in **2001 (2) CTC 755**.

(iv) The unreported Judgment of this Court in **W.P.No.18723 of 2003 [Fenner (India) Limited Vs. The Superintendent of Police, Karur and others]**, this Court has held as follows:-

"32. By placing material evidence, the petitioner has satisfied this Court for invoking extraordinary remedy under Article 226 of the Constitution of India. The only question to be considered at this length of time is whether the members of the union, respondents 4 to 11, have to be kept away at a distance of 300 meters from the factory premises to hold demonstrations, slogans or conduct any of the lawful activities as per the Trade Unions Act and other labour laws, permanently, by issuance of a Mandamus. The contention that if they have to stay away at a distance of 300 meters, and even their voice would not be heard by the Management deserves to be considered and having regard to the rights granted under the Industrial Laws to the workmen, and the rival contentions, this Court is of the view that the Mandamus sought for has to be granted, subject to a restriction of 200 meters from the factory premises, to hold dharna, demonstration etc.

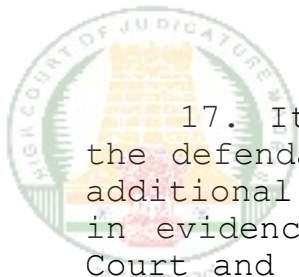
33. Hence, there shall be a direction to the respondents 1 to 3, to provide police protection to the petitioner's industry to run peacefully with its staff and willing workers and the respondents unions 4 to 11 respectively, their members shall hold demonstrations, slogans or conduct any of the lawful activities, as per the Trade Unions Act and other Industrial Laws, 200 meters away from the petitioner's factory premises."

15. On a perusal of the materials available on record, it is seen that the General Manager of M/s.Manapparai Maris Spinners
<https://hcservices.ecourts.gov.in/hcservices/>



Limited has filed a suit for permanent injunction restraining the defendant, its men and agent etc., from interfering with the Management of the institution and functioning of the plaintiff in respect of the suit property by holding demonstration, agitation and strike within a radius of 300 metres from its mill premises or preventing the contract workers and Directors, Administrative staffs, customers and supervisors to have ingress to or egress out of the mill in any manner whatsoever. The plaintiff institution was established in the year 1996 and the mill employees nearing 300 employees which includes permanent, scheme trainees, casual, contract employees and staffs etc. The defendant's union was registered in October 2004 and its registration was not communicated to the Management. The plaintiff-Management came to know the registration of the Trade Union only in November 2004, after agitation and strike organised by the members of the union. According to the plaintiff, the shift supervisor asked one Ayyakannu to do overtime work, but he refused to do so stating that he was suffering from illness. Due to which, Velusamy and office bearer of the Trade Union trespassed into the supervisor room and threatened him that Ayyakannu will not do overtime work. When it was questioned by the shift supervisor, other employees joined with them and threatened the shift supervisor and later it has become a reason for strike, agitation, demonstration etc. The Management issued a memo for disobeying the direction of the shift supervisor and placed him under suspension and it was also questioned by the workmen asking the management to reinstate him into service and indulge in agitation, strike, demonstration etc.

16. The contention of the defendant is that the Management treated the workmen as bonded labourers and they were compelled to do work without allowing them to go home and the maternity leave was not granted to the female workmen and also directed the women employees to work during night shifts, wherein law prohibits the working women not to employ them during night shifts and the management has not regularised the services of the workmen, who have worked for more than the statutory period, hence they have formed a trade union and resisted the same. The Management was not happy with the formation of Trade Union and they treated one Ayyakannu-the shift supervisor to stand outside the work place without giving food or allowing him to take rest and also issued a charge sheet against him and other 18 employees and dismissed them from service arbitrarily without holding an enquiry and the Industrial Dispute raised by them is pending before the Labour Court and the above act of the Management induced the workers to indulge in strike, agitation, dharna etc., and that though the agitation and demonstration is peaceful, the Management had called the Police and prevented the workers from agitating lawfully and the suit is barred under Section 18 of the Trade Union Act, which was later on, the learned counsel for the appellant has not insisted on the said point to be determined by this Court.



17. It is further seen that before the first Appellate Court, the defendant filed an application in I.A.No.185 of 2010 to receive additional documents. The additional document sought to be received in evidence is the copy of the Judgment rendered by the criminal Court and the copy of agreement entered into under Section 12(3) of the Industrial Disputes Act. The said criminal case has been ended in acquittal for the offences under Sections 147, 294(b), 341 and 427 I.P.C. It is only due to the lack of evidence and giving the benefit of doubt and this is not accepted by the first Appellate Court stating that these documents need not be considered, however, marked the same as Exs.B.14 and B.15. Hence, whether the peaceful demonstrations are legal or not to be decided?

18. The first Appellate Court, after considering the averments made in the appeal, had come to the conclusion that the strike was not a short one which has prolonged to a period of three months and the said demonstration and strike cannot be treated as peaceful and lawful and had considered the submissions of the plaintiff's Management and had granted an order of permanent injunction restraining the defendant, office bearers of the workmen attached to the Trade Union from indulging in agitation and demonstration within the radius of 300 meters of the plaintiff's Mill premises. Section 18 of the Trade Union Act was also considered by the first Appellate Court and come to the conclusion that the agitations were violent and prevented the other staffs from going for their employment. Though Section 18 of the Trade Union Act prohibit civil suit or other proceedings against any registered Trade Union, office bearer or in respect of any act in contemplation or furtherance of trade dispute, the suit is maintainable as the employees strike turns violent during agitation and dharna and that point was made against the defendant.

19. It is relevant to extract Sections 14 and 41 of the Specific Relief Act, 1973, which reads as follows:-

"14.Contracts not specifically enforceable.-The following contracts cannot be specifically enforced, namely:-

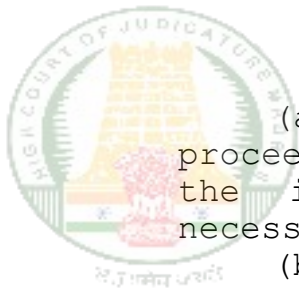
(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;

(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;

(c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and

(d) a contract which is in its nature determinable.

41. Injunction when refused.- An injunction cannot be



(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not sub-ordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust; 1 [(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.]

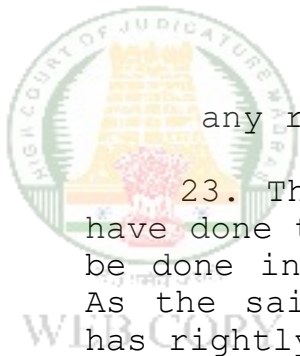
(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to be the assistance of the court; (j) when the plaintiff has no personal interest in the matter. 42. Injunction to perform negative agreement."

20. Section 14 of the Specific Relief Act, 1963 says that where the contracts cannot be specifically enforceable. Here is the case where the Court has ordered permanent injunction against the employees and supervised by the Management and the parties to the said contract is not permitted to do certain Acts which would be detrimental to the Management.

21. Section 41 of the Specific Relief Act, 1963, has got nothing to do with the case on hand, wherein the Courts below have granted injunction wherein they have not prevented the Trade Union from holding dharna, but only restricted their dharna to a place where the ingress and egress of the other staff members or the finished products of the factory not to be prevented.

22. Section 37 of the Industrial Disputes Act, 1947, reads as follows:-

"37. Protection of action taken under the Act.- No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or



any rule made thereunder."

23. There is no evidence provided by the Trade Union that they have done the acts, which are in good faith and they are intended to be done in pursuance of this Act or any rules was not established. As the said persons have indulged in untoward actions, this Court has rightly proceeded further.

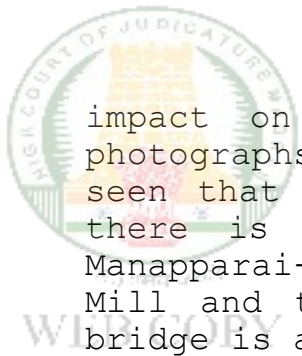
24. It is seen that when there are agitations which has turned violent, which has been accepted by evidence that there was some untoward incident happened during the strike, the civil Courts can interfere with the same and prevent them from holding dharna within the certain limits of the factory premises. The Management is entitled to get such an order of injunction restraining the workmen from indulging in demonstration or holding Dharna within a particular radius from the mill premises.

25. Further, the learned counsel appearing for the respondent pointed out that this Court has categorically held that 300 meters from the appellant factory premises is reasonable.

26. From the above findings, it is clear that the workers had never been prevented from raising slogan or objection beyond the radius of 300 meters of the factory premises. The Management had taken action only on the erring workmen who had prevented the workman from attending work and the Mill functions have to be looked into and there cannot be any agitation which will affect the running of the Mill in a peaceful manner.

27. As the Courts below have rightly granted a decree of permanent injunction restraining them from holding any agitation within a radius of 300 meters alone has to be looked into. When the Trade Union members have right to call for a legal strike or agitation in a lawful manner, they cannot have any unlawful activities which are violent. When they can agitate on a lawful manner to put pressure on the Management from meeting out the legal demand. That being the case, the agitating workmen have to be prevented from doing unlawful activities. If the other workmen, who are not willing to participate in the strike and they wanted to attend with their work, they cannot be prevented by the other workmen, who are holding dharna and cannot prevent the customers or vehicles carrying the workmen or materials to be taken inside the Mill premises. Hence, when the agitation has turned violent in the previous occasion which is the cause of action for the suit, the trial Court as well as the first Appellate Court has rightly come to the conclusion that they can be prevented by an order of permanent injunction not to hold agitation within a radius of 300 meters.

28. Only regarding the issue of distance (300 meters) to be decided and determined by the Courts below as to whether the same would not be appropriate, as the demonstration will not have any



impact on their cause of agitation and on going through the photographs and other materials available on record, it could be seen that immediately after the Mill, there is an open space and there is a road available and in front of the Mill that is Manapparai-Kulithalai Road, private lands are available next to the Mill and there is a Government land at South East corner and a bridge is also seen.

29. Hence, this Court is of the view that when the said workers have been allowed to hold dharna in a peaceful manner, it could be a reasonable radius of distance to allow them for holding the dharna and accordingly, this Court is inclined to reduce the distance and allow the said demonstration to be held beyond 200 meters from the main gate of the factory premises. The appellant is at liberty to approach the concerned Police Station seeking permission to hold dharna and it is left open to the concerned police officials to earmark the place of dharna beyond 200 meters from the main gate of the factory premises. In all other aspects, the Judgment and Decree passed by the first Appellate Court remains unaltered.

30. In fine, this second appeal is allowed in part without costs and the judgment and decree, dated 26.08.2010 passed in A.S.No.85 of 2010 by the Principal District Court, Tiruchirappalli, is modified. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Principal District Judge,
Tiruchirappalli.

2.The II Additional Subordinate Judge,
Tiruchirappalli.



3.The Record Keeper, (2C)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-37058[F] dated
02/12/2021)

+2 CC to M/s.G.MOHAN KUMAR, Advocate (SR-36937[F] dated
02/12/2021)

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